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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 **JORGE A. PANTOJA,**

Petitioner,

15 v.

16 **K. PROSPER, Warden,**

Respondent.

C 07-3572 CRB

**ANSWER TO PETITION FOR
WRIT OF HABEAS CORPUS**

19 Respondent provides the following answer to the petition for writ of habeas corpus:

20 **I.**

21 Petitioner, Jorge A. Pantoja, was committed to the California Department of Corrections
22 for 16 years to life after a valid conviction by court trial in Humboldt County Superior Court, Case
23 Number CR 013978, for second degree murder, in violation of California Penal Code sections 187
24 and 189, by personal use of deadly and dangerous weapon within the meaning of Penal Code section
25 12022(b)(1). CT 62, 66, 98-99, 101.^{1/}

27 1. "CT" refers to the clerk's transcripts of petitioner's state court trial, lodged with this court
28 as Exhibit B; "RT" refers to the reporter's transcripts of petitioner's state court trial, lodged with this
court as Exhibit C.

II.

Petitioner filed an appeal of his conviction in the California Court of Appeal, First Appellate District, Division Three, claiming that there was insufficient evidence to sustain the second degree murder conviction. Exh. D (Appellant's Opening Brief), Exh. E (Respondent's Brief), Exh. F (Appellant's Reply Brief).

III.

In an unpublished decision filed on February 28, 2007, the Court of Appeal affirmed the judgment. Exh. G.

IV.

Petitioner filed a petition for review in the California Supreme Court. Exh. H. On May 9, 2007, the Supreme Court denied review. Exh. I.

V.

Petitioner has exhausted his state remedies and his petition is timely.

VI.

Petitioner's conviction was not obtained in violation of any federal constitutional right, and each and every claim in the petition is without merit. Specifically, respondent denies that there was insufficient evidence of malice to sustain petitioner's conviction for second degree murder.

VII.

Except as specifically admitted herein, respondent denies all material factual averments of the petition.

VIII.

We submit herewith the relevant record of the state trial and appellate court proceedings as itemized in the accompanying receipt for exhibits.

CONCLUSION

WHEREFORE, respondent respectfully submits that the order to show cause be discharged, the petition for writ of habeas corpus be denied, and this action be dismissed.

Dated: April 25, 2008

Respectfully submitted,

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